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Clerk of Circuit Court

COMMONWEALTH OF VIRGINIA

## *Fairfax Circuit Court*

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BARBARA A. KENNEY  
Chief Deputy

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### REFINANCE TRANSACTIONS

Dear Land Record Patrons:

This year the General Assembly passed and the Governor signed SB409. First and foremost, SB409 eliminates the refinance with the same lender exemption. Refinance transactions recorded after July 1, 2012, will no longer need documentation proving the holder of the note and the new lender are the same. In fact, we no longer need to see the payoff statement.

Under the changes to Section 58.1-803(D) of the Code of Virginia, ALL refinance transactions will be taxed at a rate of 18 cents per 100 dollars of value on the entire transaction. The General Assembly specifically struck the previous language where you would get a break on the original debt but pay the full tax on any amount in excess of the original loan amount ("new money"). In the committee hearing, the General Assembly members expressly stated that they wanted to make sure the tax was fair, simple and easy to apply. Therefore, the General Assembly reduced the rate on the entire transaction even if new money is taken out. As a result, you will need to certify the deed book and page of the prior deed of trust but you will not need to provide a copy of the payoff statement.

For example, Homeowner originally took out a loan in 1995 for \$300,000. Homeowner has refinanced with the same lender (no tax paid), in 2000, 2005 and 2011. On July 2, 2012, Homeowner refinances again for \$400,000. On the first page of the new trust, certify that this is a refinance transaction and provide the deed book and page of the last deed of trust in 2011. Even though no taxes were paid on that transaction, taxes were paid on the 1995 transaction and there is no need to require you to provide a chain of title. Furthermore, under the new changes, the 18 cents per 100 dollars of value would apply to both the \$300,000 and the \$100,000 of "new money."

The localities are allowed to charge up to 1/3 of the state recordation tax. More than 20 years ago, the Fairfax County Board of Supervisors voted to charge the full one-third. Therefore, you will need to remember to also collect the 6 cents per 100 dollar local recordation tax.

Please note that refinance transactions should be shown on the coversheet as "Refinance Trust." In addition, the "Amount Not Taxed" information is no longer needed.

The second change to Section 58.1-803 of the Code of Virginia, deals with subsection C. Subsection C states, in part:

On deeds of trust or mortgages, which are supplemental to or wrap around existing deeds of trust, *or which modify the terms of an existing debt with the same lender*, on which the tax imposed hereunder has already been paid, the tax shall be paid only on that portion of the face amount of the bond or obligation secured thereby which is in addition to the amount of the existing debt secured by a deed of trust or mortgage on which tax has been paid. The instrument shall certify the amount of the existing debt.

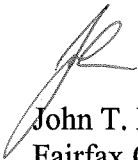
This was an amendment proposed by the Governor. On the one hand, the term "with the same lender" was stricken from subsection D of the statute. On the other hand, the term "with the same lender" was added to subsection C. This section will probably not be used very often. The majority of modifications recorded in Fairfax involve commercial transactions with the same lender. Remember, Section 58.1-809 of the Code of Virginia, exempts modifications from taxation unless the amount of money secured thereby is increased. If additional money is borrowed under the modification, the full recordation taxes will be assessed on the new money.

The question has arisen whether or not the reduced fee schedule in subsection D, applies to subsection C. Because subsection C retained the requirement to certify the existing debt and did not refer to the reduced fee schedule in subsection D, we will be charging the full recordation tax rate of 25 cents per 100 dollar of value.

Please note that modifications under this provision should be shown on the coversheet as "Modification of Trust" and the existing balance must be certified on the first page of the document.

I hope this information is helpful. I am sure questions will arise and I will try to address them.

Sincerely,



John T. Frey, Clerk  
Fairfax Circuit Court